

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #98-69

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On December 3, 1997, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of amendments to 326 IAC 5-1. Comments were made by the following parties:

Indianapolis Power and Light
Indiana University

(IPL)
(IU)

Following is a summary of the comments received and IDEM's responses thereto.

326 IAC 5-1-4(b)

Comment: The current language under 326 IAC 5-1-4(b) that states that a continuous opacity monitor (COM) prevails over a visual observation should not be changed. A change that would allow visual observations to prevail over the COM is bad policy and would remove the certainty that sources have when using a COM to determine compliance. It would also eliminate the ability of a source to react quickly and make any necessary adjustments to stay in compliance. An inspector may note a problem based on visual observations, but it may be months or years before a source is notified.

A COM is generally more accurate and objective than visual observations. The monitors are required to be calibrated and the precision has to be certified. Visual observers are only certified based on being as accurate as a monitor and the certification process confirms whether or not the visual observations are valid compared to a monitor.

Changing the rule would be unfair to those sources that have spent a lot of money installing and maintaining COMs. The COMs have been installed, at the urging of regulatory agencies, to confirm continuous compliance and maintain compliance. The change would turn the tables and would change the rule so that sources would not necessarily know if they are in compliance or not.

The change that is being proposed, allowing visual observations to prevail over a COM in any situation, may be beyond what the board may do legally. IDEM has stated that there are some situations where a visual observation is better than a COM. If that is the case, the board should consider those specific situations and not change the rule universally. This would allow the specific parties to comment, present their concerns, and the board would have to consider the situation and apply rulemaking requirements, such as technical feasibility and economic reasonableness.

While IDEM has referenced a proposed disapproval by the U.S. EPA, this occurred some time ago and is not relevant to this rule. IDEM is also relying on federal New Source Performance Standards (NSPS), but the provisions of the NSPS apply to new sources and the provisions IDEM has referenced are for initial performance testing. In addition, IDEM has referenced a nonrule policy document concerning opacity monitor placement, however that document is not relevant to this situation and has no binding effect.

The rule as presented should be adopted, except for the proposed changes to 326 IAC 5-1-4(b). (IPL)(IU)

Response: IDEM does not believe that the proposed change to 326 IAC 5-1-4(b) would lead to uncertainty concerning compliance or affect a source's ability to make corrections quickly. As has been previously stated, the continuous opacity monitor (COM) data would still be used for compliance determinations, unless a situation arose where the provisions of subsection (b) would apply. This situation may arise infrequently. However, IDEM believes that the option should be available. Since the COM data would still be valid for compliance determinations, the source could still use the data to react to possible problems and maintain compliance.

The reference to the new source performance standard (NSPS) is relevant to the proposed change. The specific citation, 40 CFR 60.11, Compliance with standards and maintenance requirements, does apply to sources that have been in operation since the promulgation of that rule and does not only apply to new sources. The initial performance test requirements are found at 40 CFR 60.8. The provisions of 40 CFR 60.11 would apply to a source that is subject to a NSPS and required to do a performance test to demonstrate compliance. Therefore, 40 CFR 60.11 does provide an example of federal regulations consistent with the proposed rule changes.

In addition, during the comment period and in subsequent informal comments provided to IDEM, the agency was reminded of the federal credible evidence rules. Previous versions of the proposed rule included language that would have the visible emissions readings prevail over the COM data. Several commentators pointed out that having rule language that absolutely allows one method to prevail over another without any other considerations could be determined to be inconsistent with the credible evidence rule. IDEM seriously considered these comments and revised the rule to allow IDEM to take action, but sources would be able to provide other evidence to refute the agency's findings. It was determined that this would provide the agency with the flexibility it needed, but the change would be consistent with the federal credible evidence rule. The current rule language appears to be inconsistent with the credible evidence rule, because the language specifies that one method prevails over another. IDEM believes that the language should be changed and the proposed language is consistent with federal regulations, both new source performance standards and credible evidence.

326 IAC 5-1-3(d)

Comment: The proposed changes include flexibility for the commissioner to require a continuous opacity monitor (COM) for sources that have requested a temporary alternative

opacity limit. There are concerns that a source could be required to install a COM depending on the way a source is operated. There are certain situations where due to heating load or the failure of a boiler at night, a boiler may have to be started at night. This situation would probably mean a COM would have to be installed to demonstrate compliance with the temporary limit. The boilers in question are not required at this time to have a COM pursuant to any other regulations and the installation and maintenance would be a financial and operational burden just to demonstrate compliance when a boiler is started at night. It is suggested that the proposed rule include some criteria or an opportunity for the commissioner to consider the type of or size of the boiler, the operating conditions, or other site-specific information when determining if a COM is required. (IU)

Response: IDEM agrees that the rule could be improved by including criteria that may be used to determine whether or not a COM will be required. The agency will continue to work with interested parties to develop rule language establishing the criteria to be used.